

**DECISION**



26040  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-212520

**DATE:** August 22, 1983

**MATTER OF:** Liberty Excavators, Inc.

**DIGEST:**

Protest questioning the apparent low bidder's ability to comply with the solicitation's limitation on subcontracting is dismissed. The protest concerns the bidder's responsibility, an issue that GAO reviews only in limited circumstances not present here.

Liberty Excavators, Inc. protests the possible award of a contract to Project Builders, Inc., the apparent low bidder under invitation for bids (IFB) No. N62472-81-B-0180, issued by the Naval Facilities Engineering Command. The solicitation was for street resurfacing work at the Navy Ships Parts Control Center in Mechanicsburg, Pennsylvania. The protester contends that Project Builders has neither the capability nor the experience to perform a paving contract and, therefore, will be unable to satisfy the solicitation's requirement that the contractor perform at least 20 percent of the work with its own employees.

The protester's contention that Project Builders cannot comply with the solicitation's limitation on subcontracting concerns that bidder's responsibility, a matter that must be determined in the affirmative by the contracting officer prior to award. This Office will not review an agency's affirmative determination of a bidder's responsibility absent either a showing of possible fraud or bad faith or an allegation that definitive responsibility criteria have not been met. Merchants Rent-A-Car, Inc., B-211934, June 15, 1983, 83-1 CPD 659. Here, there is no suggestion of possible fraud or bad faith. Also, a solicitation provision requiring a contractor to perform a certain percentage of the work with its own employees simply states how the contractor is to accomplish the work and does not constitute a definitive responsibility criterion. Delta Elevator Service Corporation, B-208252, March 23, 1983, 83-1 CPD 299. Thus, there is no basis for our considering the protest.

B-212520

We dismiss the protest.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel